SIMRIKHIA *a*

v.

DOLLEY MUKHERJEE & ORS.

SUPREME COURT, INDIA
AM AHMADI J
M FATHIMA BEEVI J *b*
[CRIMINAL APPEAL NO. 128 OF 1990 FROM THE JUDGMENT AND ORDER DATED 19 AUGUST 1989 OF THE PATNA HIGH COURT IN CRIMINAL MISCELLANEOUS NO. 2314 OF 1989]
2 MARCH 1989

CRIMINAL PROCEDURE : *Sections 482, 362 - Inherent power of High Court under s. 482 - Scope - Does not extend to what is expressly barred under the Code - Hence cannot be exercised by High Court to review its own earlier decision in view of s. 362 - Words and Phrases - 'Review', meaning of.* *c*

STATUTORY INTERPRETATION: *Internal aids - A provision conferring inherent power should be construed in the light of other provisions of the statute containing any express limitation or bar on such power.* *d*

A case was instituted on a private complaint by the appellant for offences under ss. 452 and 323, IPC. The Judicial Magistrate First Class, in exercise of power under s. 192(2), CrPC transferred it for inquiry under s. 202, CrPC. The Court of Second Class Magistrate after examining witnesses issued processes against the accused respondents. The respondents challenged the order issuing process by application under s. 482, CrPC mainly on the ground *e* that the First Class Magistrate had transferred the case without taking cognizance of the offence and the subsequent proceedings were, therefore, illegal. The High Court on the basis of its definite finding arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate that the complaint was taken cognizance of, dismissed the petition. But the respondents once again moved a petition under s. 482 before the High Court. The only ground on which relief was claimed is *f* the alleged irregularity in the transfer of the proceedings. But it was alleged that the record of the proceedings on close scrutiny would indicate that the case had not been taken cognizance of before the transfer. The High Court accepted the case of the respondents and quashed the proceedings by the impugned order. It was contended on behalf of the appellant before the Supreme Court that the second application under s. 482, CrPC was not entertainable, since the exercise of power under s. 482 on a second application by the same party on the *g* same ground virtually amounted to the review of the earlier order and was contrary to the spirit of s. 362 of the CrPC and that the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. Allowing the appeal the Supreme Court.

Held:

[1] The inherent power of the High Court under s. 482 is intended to prevent the abuse of *h* the process of the Court and to secure ends of justice. Such powers are as much controlled by principle and precedent as are its express powers by statute. It cannot be exercised to do something which is expressly barred under the Code. If a matter is covered by an express letter of law, the Court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. Therefore, it cannot be invoked to override bar of review under s. 362. If there had been changes in the circumstances of the case, it *i* would be in order for the High Court to exercise its inherent powers in the prevailing

circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at a different conclusion is in effect a review.

[2] The impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits there is no compelling reasons to quash proceedings at that stage.

Cases referred to:

Superintendent & Remembrancer of Legal Affairs v. Mohan Singh [1975] 3 SCC 706; [1975] SCC (Cri) 156

Sooraj Devi v. Pyare Lal [1981] 1 SCC 500; 1981 SCC (Cri) 188

Legislation referred to:

Criminal Procedure Code [Ind], ss. 192(2), 202, 362, 482

For the appellant - A.D. Sikri, (Ranjan Mukherjee and D. Goburdhan with him)
For the respondents - R.K. Garg, Senior Advocate (A. Sharan with him)

JUDGMENT

M Fathima Beevi J:

Special leave granted.

The legality of the order of the High Court dated 19 August 1989 passed on an application made under s. 482 CrPC is challenged in this appeal. In a case instituted on a private complaint by the appellant for offences under ss. 452 and 323 IPC, the Judicial Magistrate First Class, Patna, in exercise of power under s. 192(2) CrPC transferred the case for enquiry under s. 202 of the Code. The Court of the Second Class Magistrate, after examining witnesses, by order dated 22 March 1985 issued process to the two accused the respondents herein. The order of the Magistrate issuing process was challenged by the respondents under s. 482 before the High Court. The main ground urged before the High Court was that the First Class Magistrate had transferred the case without taking cognizance of the offence and the subsequent proceedings were, therefore, illegal. The High Court, by its order dated 20 August 1988, dismissed the petition. It was found that there was no such illegality. The respondents again made Crl. Misc. Petition No. 2314 of 1989 under s. 482 CrPC before the High Court alleging, *inter alia*, that the record of the proceedings on close scrutiny would indicate that the case had not been taken cognizance of before the transfer. The learned Single Judge accepted the case of the respondents and quashed the proceedings by the impugned order.

The learned Counsel for the appellant contended before us that the second application under s. 482 CrPC was not entertainable, the exercise of power under s. 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of s. 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned Counsel. The inherent power under s. 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it

would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under s. 362.

In the present case, there had been a definite finding that the complaint was taken cognizance of by the Magistrate before he transferred the proceedings under s. 192(2) for enquiry under s. 202 CrPC. This finding has been arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate. A reappraisal of the facts on record to determine whether such cognizance had been taken of in a subsequent proceeding is not, therefore, warranted. The only ground on which relief was claimed is the alleged irregularity in the transfer of the proceedings. It was not open to the parties to reagitate the question by a fresh application nor was the Court empowered under s. 482 to reconsider the matter.

Section 362 of the Code expressly provides that no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the Court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

In *Superintendent & Remembrancer of Legal Affairs v. Mohan Singh* [1975] 3 SCC 706/1975 SCC (Cri) 156 this Court held that s. 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court *vis-a-vis* an earlier order made by it was, therefore, not concluded by this decision.

The inherent jurisdiction of the High Court cannot be invoked to override bar of review under s. 362. It is clearly stated in *Sooraj Devi v. Pyare Lal* [1981] 1 SCC 500/1981 SCC (Cri) 188, that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The Court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage.

We allow the appeal and set aside the order of the High Court.

Also found at [1990] 2 CLJ 731